No. 1307

Supreme Court of the United States.

OCTOBER TERM, 1946.

WABASH OIL AND GAS ASSOCIATION,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT THEREOF.

EDMUND A. WHITMAN,
Attorney for Petitioner.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Statement of the Matters Involved.

This petition presents the question whether the decision of the Circuit Court of Appeals for the First Circuit is in conflict with the decisions of the Fifth Circuit in the two cases of—

Commissioner v. *Horseshoe Lease Syndicate,* 110 Fed. (2d) 748;
Commissioner v. *Rector & Davidson,* 111 Fed. (2d) 332—

where the basic facts of a tenancy in common among the parties was substantially identical with those in the in-

stant case. In both of these cases certiorari was denied by this Court.

Commissioner v. *Horseshoe Lease Syndicate*, 311 U.S. 666.

Commissioner v. *Rector & Davidson*, 311 U.S. 672.

The facts in this case have been stipulated and are found on page 16 of the Record. They have been summarized both by the Circuit Court of Appeals and also by the Tax Court in its opinion (R. 20).

The petitioner contends that the decision in the instant case that the tenancy in common is to be taxed as a corporation is in direct conflict with the cases above referred to in the Fifth Circuit.

Jurisdiction of This Court to Review the Decree in Question.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by an Act of February 13, 1925, c. 229, 43 Stat. 938, 28 U.S.C. Sec. 347 (a). The decree which the petitioner seeks to have reviewed was entered by the Circuit Court of Appeals for the First Circuit on April 3, 1947.

Wherefore your petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the First Circuit; that the judgment of the Circuit Court of Appeals be reversed and set aside and final judgment be entered for petitioner with its costs; and that your petitioner be granted such other and further relief as may be proper.

Respectfully submitted,

EDMUND A. WHITMAN,
Counsel for Petitioner.

BRIEF IN SUPPORT OF FOREGOING PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

This is a petition to review the decision of the Circuit Court of Appeals for the First Circuit, not yet reported, affirming the opinion of the Tax Court of the United States reported in 6 T.C. 542.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by an Act of February 13, 1925, c. 229, 28 U.S.C. Sec. 347 (a). The final decree of the Circuit Court of Appeals which petitioner seeks to have reviewed was entered April 3, 1947.

Statement of the Case.

Briefly stated, $19,000 was collected in varying amounts from 55 different persons for the purpose of entering into an oil venture in Grayville, Illinois, the money being paid into the hands of one Patton, a resident of Newton, Massachusetts. He and one Carey of Grayville, both contributors, negotiated an oil lease of lands in Grayville, necessary payments to secure the same being paid from the funds so collected, the title to the lease being taken in the name of Patton. Carey, a manufacturer in Grayville, employed an experienced operator to drill a well. A well was drilled and the requisite pumping machinery, tanks and delivery piping were purchased from the fund. The oil was sold to a pipe line operator through a connecting pipe

and paid for at the price posted for all oil enterprises in that district.

At the end of December, 1940, an agreement was prepared and signed by all the contributors. It provided first for a definite statement by Patton that he had acted in securing the lease as agent for all the contributors and so held it and would continue to so hold it. It appointed Patton as treasurer to have charge of the finances and Carey to supervise the operation. It also appointed one Hall to act in a purely advisory capacity, and then gave full powers of attorney to these three to act when needed. The text of the agreement is found in the opinion of the Tax Court (R. 21).

During 1941 other wells were drilled and some further equipment and supplies were purchased by Carey, money being obtained partly from a bank on promissory notes secured by assignment of the lease and a chattel mortgage on the personal property. Other money was secured by Patton on promissory notes signed by him.

The agreement further provided that in any contract or agreement entered into there should be a provision inserted that the other contracting party should look for payment to the assets and not to the individuals. This provision was never complied with by either Carey or Patton.

The remaining clauses of the agreement provided, without so specifying, for the mining law of the United States that in a mining enterprise those associated have full power to transfer their interests, but no right to terminate the business by withdrawal or assignment.

Argument.

While the opinion of the Circuit Court of Appeals mentions the cases of Horseshoe Syndicate and Rector & Davidson, set out in the petition, there was no discussion thereof.

In the Horseshoe case we quote from the opinion of the Court as follows:

> "The facts here are presented by stipulation, and, insofar as necessary to the decision, are as follows: In 1931, the several owners of a tract of land in Texas executed a mineral lease thereon to J. Edgar Finley, P. T. Fullwood, and the Patterson Drilling Company, a corporation, pursuant to an agreement between said parties, under the terms of which the lessees were required to organize a syndicate having 350 units of a par value of $100 each, to sell the units, and, from the proceeds, to drill an oil well on the property. The consideration to the lessors was a 1/8 royalty, a yearly rental of $1 per acre, and 35 units.
>
> "Finley, Fullwood, and the Patterson Drilling Company assumed the name Horseshoe Lease Syndicate, divided their joint interest in the lease into 350 fractional parts, and sold as many of said parts as they desired, delivering to the purchasers an assignment of one or more fractional parts in accordance with their purchase. Under the provisions of the assignment, the assignors contracted to drill a well with their equipment, and to operate, market, manage, and account for all proceeds thereof. Each purchaser executed in favor of the assignors a power of attorney, empowering them to act for and in behalf of all coowners in all matters relating to the property of the syndicate, thereby vesting the management and control in the three attorneys in fact. No provision was

made for the perpetuation of the management so created, or for the succession or substitution of attorneys in fact. The fractional parts purchased by assignment were readily transferable by re-assignment, and many such transfers were made. The well contracted to be drilled by the assignors was to be paid for by them, and any additional wells drilled were to be paid for out of the proceeds of the wells then producing. Excepting this stipulation, there was no other limitation of liability in favor of the assignees. The net earnings of the enterprise periodically were to be computed and divided among the co-owners as their interests appeared; no surplus was to be created, and no salaries were to be paid.

"The syndicate filed a partnership return for the year 1932, and the commissioner claimed that a corporation return should have been filed, thereby creating the issue here.

"The determination of this issue depends upon whether the syndicate, so organized and operated, resembles a corporation more nearly than it does a partnership, not being either exactly. This is a question of fact, and the Board of Tax Appeals, under the stipulated facts, found that, for purposes of the income tax laws, the syndicate more nearly resembled a partnership. This finding must be upheld by this court if there is substantial evidence to support it, even though conflicting inferences fairly might be drawn by reasonable men from the undisputed facts.

"The sole property owned by the syndicate was a mineral lease on real estate. The holdings of the various owners were not represented by shares of stock, but by undivided fractional interests in the lease; and the title to the property was in them. The owners of the lease were therefore tenants in common

of realty. The syndicate had centralized management, but it was achieved by powers of attorney executed by each holder, not by election. No continuity of existence was contemplated or provided for, although the undivided interests were readily transferable by assignment and the death of any holder would not affect the life of the syndicate. The management was vested with power to incur obligations burdening all, and there was no limitation of personal liability. No officers or directors were elected, no meetings held, no by-laws enacted, no declaration of trust made, and the unit holders had no voice in the management of the affairs of the syndicate. The management was vested with power to incur obligations burdening all, and there was no limitation of personal liability. No officers or directors were elected, no meetings held, no by-laws enacted, no declaration of trust made, and the unit holders had no voice in the management of the affairs of the syndicate.

"From the undisputed facts above stated, a reasonable inference of fact may fairly be drawn that respondent was not an association within the meaning of the statute. Therefore, there is substantial evidence to support the finding of the board to this effect, and its conclusion of law that respondent was not subject to income tax as a corporation was correct."

In the Rector & Davidson case we quote from the opinion of the Court as follows:

"The facts in this case are very similar to the facts in Commissioner of Internal Revenue v. Horseshoe Lease Syndicate, 110 F. 2d 748, decided by this court on March 26, 1940. Here, each of four individuals purchased for cash an undivided one-fourth interest

in a mineral lease on two and five-eighths acres of land in Texas. One of the four, Rector, was an experienced oil operator; another, Davidson, had some knowledge of bookkeeping; so the owners vested title to the lease in these two in order to facilitate the management and operation of the property. The name of Rector and Davidson was then assumed to identify the venture. In order to obtain money with which to develop the lease, the joint interest therein was divided into 360 fractional parts, 72 of which were sold to various individuals, and the remaining parts were divided equally among the four individual owners. Each transfer was by an assignment executed by Rector and Davidson, and each assignment designated Rector and Davidson as the agents and attorneys in fact of the assignee, authorizing them to execute all instruments, control, manage, and operate the lease, collect all proceeds thereof, pay all proper operating expenses, and distribute to the respective owners their proportionate parts of the net proceeds thereof."

The Court then discussed the case of *Morrissey* v. *Commissioner,* 296 U.S. 344, and the criteria therein laid down, and went on to say:

"In the case before us the title was held in undivided interests by all of the participants, and they were tenants in common of realty. Centralized management was obtained, not by shareholders' votes, but by the creation of an agency relation by each co-owner as principal, and without provision for continuity. There was no limitation of personal liability. No stock was issued, no meetings were held, and the enterprise had no office, no seal, no minutes, and no stock books; nor was any trust ever created. In these cir-

cumstances, the finding of the Board of Tax Appeals that respondent was a syndicate or joint venture which resembled a partnership more nearly than it did a corporation was a fair and reasonable conclusion, supported by the evidence, and its decision should be affirmed."

We submit in the instant case the contributors were and have remained tenants in common. The fact that the title to the lease was taken for convenience in the name of one contributor, and thereby technically the contributors were equitable tenants in common, should not be in itself sufficient to impose an obligation under the tax law of the United States, and the instant case is, we say, a pure tenancy in common operated by duly appointed agents.

Referring to the agreement between the co-tenants, there was nothing therein which in itself creates any other relation between them than that of co-tenants and the law should not impose upon them any other relation as a consequence of a course of conduct and dealing naturally referable to the relation already existing between them, which makes such a course of conduct to their common advantage.

The instant case was heard in the First Circuit by stipulation, and we submit that if the stipulation had provided for hearing in the Fifth Circuit, the Court would have adhered to the principle of its two prior decisions and overruled the finding of the Tax Court. The difference between the two circuits was simply in the application of the law as laid down in the Morrissey case to the facts.

It is to be noted that the clauses in the agreement relative to the termination of the enterprise and the assignability of interests added nothing to the situation, as they simply restated the mining law of the United States, which

forbids the termination of a mining enterprise by the withdrawal of one of its members or by assignment of interest.

Kahn v. *Smelting Co.*, 102 U.S. 641, at 645.

We submit, therefore, that the writ should issue as prayed for.

Respectfully submitted,

EDMUND A. WHITMAN,

Attorney for Petitioner.

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CITATIONS

744254—47——1

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1307

WABASH OIL AND GAS ASSOCIATION, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court of the United States (R. 20–29) is reported in 6 T. C. 542. The opinion of the Circuit Court of Appeals (R. 38–43) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 3, 1947 (R. 43). The petition for a writ of certiorari was filed on April 29, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer is an association taxable as a corporation within the meaning of Section 3797 of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

The pertinent statute and regulations are set forth in the Appendix, *infra*, pp. 13–15.

STATEMENT

The facts, most of which were stipulated between the parties (R. 16–19), were found by the Tax Court accordingly (R. 20–27). They were summarized by the Circuit Court of Appeals sufficiently for present purposes as follows (R. 39–41):

During the summer of 1940, one Carey, of Grayville, Illinois, and one Patton, of Newton, Massachusetts, who had long been associated in the lumber milling business in Grayville, Patton being an inactive partner, solicited their friends and relatives for subscriptions (they raised approximately $19,000) to finance a venture in a newly discovered oil bearing area near Grayville. With the money so raised, they obtained an oil and gas lease in the name of Patton as lessee on a tract of land in the area, and, neither having had any experience in the oil business, they employed an experienced oil operator to take over the property and drill a well on it. This well began to produce early in December, 1940, and thereupon Carey purchased

necessary supplies and equipment with money sent him by Patton and arranged for the sale of the entire oil production. (R. 39.)

There was no written plan of organization prior to the time when the well was brought in. Soon thereafter, however (December 23, 1940) "Articles of Agreement" were prepared and executed by all the subscribers. (R. 39.)

In these Articles, it is first set out that the subscribers, who are listed with the amounts of their subscriptions, had provided the consideration for the oil and gas lease taken in Patton's name and had also provided the funds required for developing the leased property, and then Patton acknowledged and agreed that he "is, and has been, the agent" of the subscribers "in negotiating and securing" the lease and "in the development thereunder"; that "he holds said lease as agent of, and for the benefit of" the subscribers and "will execute such assignments and agreements and do such acts in connection with said lease and the developments thereunder as may be directed by two-thirds in interest of the subscribers hereto." (R. 39–49.)

Following this, the subscribers agree that Patton, Carey, and one Hall of Wellesley, Massachusetts, are to act "as agents and managers of the business of developing the property and marketing the oil, gas and other incidental products to be conducted under said lease under the

trade name of the Wabash Oil and Gas Association," and furthermore that they shall continue so to serve until their successors are appointed as thereafter set forth, and shall receive such compensation for their services as they may unanimously agree upon. Next it is provided that Patton is to act as treasurer of the business, Carey as superintendent of its active operations, and Hall in an advisory capacity with final power to decide any difference of opinion which may arise between the other two. The subscribers then agree that "These three shall have full power to conduct the business with all the powers that we should have if personally present and active," including among other specifically enumerated powers, the power to borrow money and pledge or mortgage the "lease or other assets of the business as security therefor." (R. 40.)

The Articles of Agreement continue with provisions requiring the agents and managers to keep open books of account and to make quarterly distribution of the net earnings of the business to the subscribers in proportion to their respective financial interests, subject, however, to the managers' power to reserve such portion of net earnings as may in their judgment be needed for working capital (R. 40).

Provisions follow to the effect that should Patton die, resign, or for any reason become unable to act, he, or his personal representative, will assign the lease to any person named by the other

two agents; that a majority in interest of the subscribers may remove and also replace any agent; that written approval of two-thirds in interest of the subscribers is required to authorize the agents to sell either the leasehold or the equipment purchased for use in the business; that in every contract, order, or obligation entered into by the agents on behalf of the Association it shall be stipulated that the other contracting party "shall look only to the leasehold and property used in said business for payment" and that neither the agents, the subscribers nor their successors shall be personally liable therefor;[1] and that any subscriber may sell his interest provided only that he first give the agents an opportunity to buy that interest for the benefit of the other subscribers (R. 40–41). The Articles conclude with the provision (R. 41):

> This agreement shall continue during the term of said lease and no one of the parties hereto shall be entitled to any dissolution or termination of this agreement, but on the death or bankruptcy of any one of them, the personal representatives or the trustee in bankruptcy, as the case may be, shall succeed to the interest.

During the year 1941, the Association had no office, held no meetings, made no distribution of

[1] This provision was stricken from the Articles on December 31, 1941, all but four of the subscribers assenting thereto (R. 25, 41).

net earnings, and, other than an unsigned copy of the Agreement, gave no certificate or evidence of ownership to any of the subscribers (R. 41).

The Association filed its income tax return for 1941, the year involved, as a partnership.[2] The Commissioner, however, determined a deficiency on the ground that although an association, it was "includible in the definition of a 'corporation' as prescribed by Section 3797 (a) (3) of the Internal Revenue Code" (R. 8). On appeal, the Tax Court, concluding "that petitioner more closely resembled a corporation than a partnership or joint venture," affirmed the Commissioner's determination (R. 41). The taxpayer thereupon petitioned for review (R. 33–34), and the Circuit Court of Appeals affirmed (R. 38–43).

ARGUMENT

The Circuit Court of Appeals, affirming the Tax Court's decision which had approved the Commissioner's determination, correctly held (R. 41–43) that the taxpayer is an association taxable as a corporation under the provisions of Section 3797 of the Internal Revenue Code and the applicable Treasury Regulations (Appendix, *infra*, pp. 13–15. It properly applied the principles

[2] Its return was timely filed with the Collector of Internal Revenue for the Eighth District of Illinois. Review in the Circuit Court of Appeals for the First Circuit was effected by stipulation in writing pursuant to the provisions of Section 1141 (b) (2) of the Internal Revenue Code (26 U. S. C. 1940 ed., Sec. 1141). (R. 33, 41.)

enunciated by this Court in *Morrissey* v. *Commissioner,* 296 U. S. 344, 357, 361, that the statute's classification of associations with corporations "implies resemblance * * * and not identity"; that the character of the organization is to be determined by the terms of the trust instrument or other agreement; and that, as stated in *Helvering* v. *Coleman-Gilbert,* 296 U. S. 369, 374, the parties are not at liberty to say that their purpose was other or narrower than that which they formally set forth in their agreement.

The taxpayer asserts that the decision below is in conflict with the decisions of the Circuit Court of Appeals for the Fifth Circuit in *Commissioner* v. *Horseshoe L. Syndicate,* 110 F. 2d 748, certiorari denied, 311 U. S. 666, and *Commissioner* v. *Rector & Davidson,* 111 F. 2d 332, certiorari denied, 311 U. S. 672, as to the application of the above-stated principles. While we think those decisions are incorrect because they disregarded and failed to follow the principles enunciated by this Court in the *Morrissey* and related cases,[3] they are nevertheless distinguishable upon the facts and not in conflict.

Thus, in the *Horseshoe L. Syndicate* case, the court held that while the Syndicate organized by two individuals and a corporation who owned an

[3] *Helvering* v. *Coleman-Gilbert, supra; Swanson* v. *Commissioner,* 296 U. S. 362; and *Helvering* v. *Combs,* 296 U. S. 365.

oil lease, for the purpose of drilling and operating oil wells, sold fractional interests in the lease, no centralized management was achieved by election but only through powers of attorney executed by each holder of a fractional interest. The court observed that no continuity of existence was contemplated or provided for, no limitation of personal liability, no officers or directors were elected, no meetings held, no by-laws enacted, no declaration of trust made, and the unit holders had no voice in the management of the affairs of the Syndicate. Pointing out that the owners of the lease were tenants in common, the court held that the Syndicate more nearly resembled a partnership than a corporation, and that therefore it was not an association taxable as a corporation within the meaning of Section 1111 (a) (2) of the Revenue Act of 1932.

Likewise, in the *Rector & Davidson* case, the court held that although the management was in the hands of two of the co-owners who acted as agents for the others, there was no centralized management by the shareholders' votes but only by the creation of an agency relation by each co-owner as principal. It pointed out that there was no trust created, no provision for continuity of existence, no limitation of personal liability, no stock issued, no meetings held, and the enterprise had no office, seal, minutes or stock books. Con-

sequently the court, following its previous decision in the *Horseshoe L. Syndicate* case, held that the taxpayer was a syndicate or joint venture resembling a partnership more than a corporation, and therefore not an association taxable as a corporation within the meaning of the statute.

In the present case, however, the taxpayer, under the facts of record, plainly had all the essential attributes and characteristics of a corporation—creation of an association for the purpose of conducting business for profit; centralized control and management reposed in three persons of the associates' choosing;[4] title to the business property (oil lease) held for the benefit of the group of associates by their representative; continuity of existence through the provisions for succession of their agents and managers and security from termination of the enterprise by reason of the death of any of the beneficial owners; facility of transfer of the beneficial interests of the participants; and limitation, during the tax year here involved, of personal liability of the associates and their managers or agents similar to that of corporate directors and stockholders.

[4] Whether the three persons chosen by the several associates had the title of trustees, managers or agents is immaterial. Their acting in a representative capacity for the group of participants was sufficient. Section 19.3797–2, Treasury Regulations 103 (Appendix, *infra*, pp. 14–15).

Moreover, in both the *Horseshoe L. Syndicate* and *Rector & Davidson* cases, the court stated that it was required to sustain the decisions of the Board of Tax Appeals (now the Tax Court) because they were supported by substantial evidence. Here too, the court below affirmed the Tax Court, and its decision may well be supported on that ground.[5] Indeed, in the court below, the taxpayer recognized that each case involving this issue must be judged on its own facts.

The taxpayer asserts that the provisions of the agreement herein, relative to termination of the enterprise and assignability of interests, adds nothing except that which is, in any event, required by the mining law of the United States forbidding termination of mining enterprises by the withdrawal of a member or by assignment of interest (Pet. 9–10). But whether such provisions are required or implied or not is irrelevant; what is controlling is the fact of their existence. Nor is the taxpayer aided by a showing that for some purposes the associates may be considered tenants in common (Pet. 1–2, 9). It is settled that an organization may be taxed as a corporation even though under state law it is treated otherwise than as a legal entity, at

[5] The court below considered it unnecessary to decide the scope of its reviewing power because it held that the taxpayer bore almost complete resemblance to a corporation and was therefore taxable as such in any event (R. 42–43).

least so long as it transacts its business as if it were incorporated. *Burk-Waggoner Assn.* v. *Hopkins,* 269 U. S. 110, 114; Section 19.3797–1, Treasury Regulations 103 (Appendix, *infra,* pp. 13–14). Moreover, the taxpayer does not deny that its organization was the result of an agreement whereby a number of individuals combined together in an unincorporated association for the purpose of realizing greater profits from the exploitation of its oil lease by the pooling of individual interests. *Morrissey* v. *Commissioner, supra,* p. 357. The taxpayer itself states that the associates under the agreement embarked upon "a course of conduct to their common advantage." (Pet. 9.) There is abundant evidence in the record of the commercial character of the enterprise which establishes clearly its role as a profit-making medium (R. 20–27), and therefore that it is an association taxable as a corporation under the *Morrissey* and related cases. See also *Thrash Lease Trust* v. *Commissioner,* 99 F. 2d 925 (C. C. A. 9th), certiorari denied, 306 U. S. 654, involving a very similar factual situation, wherein the court held that a group of individuals organized to develop and operate oil property constituted an association.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. The petition

for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.
SEWALL KEY,
Acting Assistant Attorney General.
ROBERT N. ANDERSON,
S. DEE HANSON,
Special Assistants to the Attorney General.

MAY 1947.

APPENDIX

Internal Revenue Code:

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof —

(1) *Person.*—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

* * * * *

(3) *Corporation.*—The term "corporation" includes associations, joint-stock companies, and insurance companies.

* * * * *

(b) *Includes and Including.*—The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

* * * * *

(26 U. S. C. 1940 ed., Sec. 3797.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.3797-1. *Classification of taxables.*—For the purpose of taxation the Internal Revenue Code makes its own classification and prescribes its own standards of classification. Local law is of no importance in this connection. * * * The

term "partnership" is not limited to the common law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. (See section 19.3797–4.) The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, and insurance company, and certain kinds of partnerships. (See sections 19.3797–2 and 19.3797–4.) The definitions, terms, and classifications, as set forth in section 3797, shall have the same respective meaning and scope in these regulations.

SEC. 19.3797–2. *Association.*—The term "association" is not used in the Internal Revenue Code in any narrow or technical sense. It includes any organization, created for the transaction of designated affairs, or the attainment of some object, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint-stock association or company, a "business" trust, a "Massachusetts" trust, a "common law" trust, an "investment" trust (whether of the fixed or the management type), an interinsurance exchange operating through an attorney in fact, a partnership association, and any other type of organization (by whatever name known)

which is not, within the meaning of the Code, a trust or an estate, or a partnership. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.[1]

SEC. 19.3797–4. *Partnerships.*—The Internal Revenue Code provides its own concept of a partnership. Under the term "partnership" it includes not only a partnership as known at common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation, or venture, and which is not, within the meaning of the Code, a trust, estate, or a corporation. On the other hand the Code classifies under the term "corporation" an association or joint-stock company, the members of which may be subject to the personal liability of partners. If an organization is not interrupted by the death of a member or by a change in ownership of a participating interest during the agreed period of its existence, and its management is centralized in one or more persons in their representative capacities, such an organization is an association, taxable as a corporation. * * *

* * * * *

[1] The amendment effected by T. D. 5468, 1945 Cum. Bull. 332, as to "investment" trusts does not apply to this case.

U. S. GOVERNMENT PRINTING OFFICE: 1947